

1 Robert H. Tyler, Esq. CA Bar No. 179572  
2 rtyler@faith-freedom.com  
3 Nathan W. Kellum, Esq. (Pro Hac Vice)  
nkellum@faith-freedom.com  
4 Nada N. Higuera, Esq. CA Bar No. 299819  
nhiguera@faith-freedom.com  
5 Mariah Gondeiro, Esq. CA Bar No. 323683  
mgondeiro@faith-freedom.com  
ADVOCATES FOR FAITH & FREEDOM  
25026 Las Brisas Road  
6 Murrieta, California 92562  
Telephone: (951) 600-2733  
7 Facsimile: (951) 600-4996

8 Scott J. Street, State Bar No. 258962  
9 sstreet@jhowardattorneys.com  
JW HOWARD ATTORNEYS, LTD.  
10 777 S. Figueroa Street, Suite 3800  
Los Angeles, California 90017  
Telephone: (213) 205-2800

12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN JOSE DIVISION**

16 **CALVARY CHAPEL SAN JOSE**, a California  
17 Non-Profit Corporation; **PASTOR MIKE**  
**MCCLURE**, an individual; **SOUTHRIDGE**  
**BAPTIST CHURCH OF SAN JOSE**  
**CALIFORNIA** dba **SOUTHRIDGE CHURCH**,  
18 a California Non-Profit Corporation; **PASTOR**  
**MICAIAH IRMLER**, an individual;

Case No.: 20-cv-03794

20 Plaintiffs,

21 vs.

22 **SANTA CLARA COUNTY; SARA H. CODY,**  
23 **M.D.**, in her official capacity as Santa Clara  
County Public Health Officer; **JAMES**  
**WILLIAMS**; in his official capacity as director of  
the Santa Clara County Emergency Operations  
24 Center; **MIKE WASSERMAN**, in his official  
capacity as a Santa Clara County Supervisor;  
**CINDY CHAVEZ**, in her official capacity as a  
Santa Clara County Supervisor; **DAVE**  
25 **CORTESE**, in his official capacity as a Santa  
Clara County Supervisor; **SUSAN ELLENBERG**,  
26 in her official capacity as a Santa Clara County  
27  
28

**FOURTH AMENDED COMPLAINT FOR:**  
**1) DEPRIVATION OF CIVIL RIGHTS**  
**UNDER 42 U.S.C. § 1983 (FIRST**  
**AMENDMENT);**  
**2) DEPRIVATION OF CIVIL RIGHTS**  
**UNDER 42 U.S.C. § 1983 (FOURTEENTH**  
**AMENDMENT);**  
**3) DEPRIVATION OF CIVIL RIGHTS**  
**UNDER 42 U.S.C. § 1983 (EIGHTH**  
**AMENDMENT);**  
**4) DEPRIVATION OF CIVIL RIGHTS**  
**UNDER 42 U.S.C. § 1983 (MONELL); AND**  
**5) VIOLATION OF BANE ACT.**

1 Supervisor; and **JOE SIMITIAN**, in his official  
 2 capacity as a Santa Clara County Supervisor;

3 Defendants.

4 **INTRODUCTION**

5 1. Early in 2020, California public health officials became aware that a novel respiratory  
 6 virus – dubbed COVID-19 – was spreading in the state and could trigger a pandemic. Despite those  
 7 concerns, state officials repeatedly told Californians that the risk to the general public was low. They  
 8 encouraged Californians not to panic and to use common sense measures to combat the virus.

9 2. But, during March 2020, a group of local government officials in the Bay Area decided  
 10 to disregard that advice and take matters into their own hands. This group was led by Defendant Sara  
 11 Cody (“Dr. Cody”), Santa Clara County’s public health officer, and Defendant James Williams, director  
 12 of the Emergency Operations Center. Dr. Cody and Mr. Williams decided that COVID-19 would soon  
 13 plague the country and cause millions of deaths, so they decided to issue a shelter-in-place order,  
 14 effectively ordering all Santa Clara County residents under house arrest unless they left to do something  
 15 the County had deemed “essential.” Dr. Cody and Mr. Williams convinced every other county in the  
 16 Bay Area to issue similar orders, garnering international media attention.

17 3. The stay-at-home orders were unprecedented. The orders did not rely on any specific  
 18 statutory authority but on vague language in the California Health and Safety Code that gives local  
 19 health officers the power to issue “necessary” orders during a state of emergency.

20 4. The Bay Area’s COVID-19 orders prompted other counties and the State of California  
 21 (“the State”) to issue their own stay-at-home order. Soon other states and countries followed, and by  
 22 May 2020, most of the global population was living under government rules that dictated who they  
 23 could see, what they could do, and how they must do it. Although the lockdowns were a global  
 24 phenomenon, they started in the Bay Area—and specifically, in the minds of Dr. Cody and Mr.  
 25 Williams.

26 5. Many governments chose not to enforce the orders strictly, leaving their edicts as  
 27 guidelines that people could choose to follow or ignore. This was not so with Santa Clara County (“the  
 28 County”). Dr. Cody and Mr. Williams vigorously enforced its stay-at-home order and subsequent

1 COVID-19 orders, despite a plethora of scientific literature and studies connecting the lockdowns with  
 2 an unprecedented mental health crisis. Churches were among those most heavily punished by Dr.  
 3 Cody's and Mr. Williams' actions.

4       6. Under Dr. Cody's and Mr. Williams' express direction, the County consistently imposed  
 5 even harsher restrictions on churches and adopted a fine system that authorized crippling fines on  
 6 churches and other organizations that did not comply with their COVID-19 orders. At Dr. Cody's and  
 7 Mr. Williams' express direction, the County singled out churches like Plaintiffs for punishment, doling  
 8 out millions of dollars in "public health" fines, which were unprecedented and unrelated to any actual  
 9 health risks. Then, during December 2020 and January 2021, at Mr. Williams' express direction, the  
 10 County sent threatening letters to Plaintiff Calvary Chapel San Jose's ("CCSJ") bank, causing the bank  
 11 to temporarily sever ties with CCSJ and forcing CCSJ to make several accelerated payments to avoid a  
 12 default on its mortgage.

13       7. Throughout this time, the United States Supreme Court admonished State and County  
 14 officials that their restrictions placed upon churches violate the First Amendment. In February 2021,  
 15 after losing in the Supreme Court, the State relented and finally began to treat churches in the same  
 16 manner as similarly situated secular activities. The County, on the other hand, made no change to its  
 17 orders. Rather, at Mr. Williams' direction, the County ignored the Supreme Court's rulings and  
 18 continued singling out churches and church officials – like Plaintiffs – for punishment. The Supreme  
 19 Court had to step in to enjoin the County's ban on indoor gatherings.

20       8. Over a year into the pandemic, neither the State nor the County have explained why they  
 21 treated houses of worship with disregard. County officials, led by Mr. Williams, are still trying to collect  
 22 millions of dollars in fines they imposed on Plaintiffs. These fines are, on their face, grossly  
 23 disproportional to the alleged harm Plaintiffs created. Indeed, Plaintiffs did no harm. The Defendants  
 24 cannot trace a single COVID-19 case to Plaintiffs' services. The fines serve just one purpose: to punish  
 25 Plaintiffs for standing up to the State and County's arbitrary and unlawful orders and to pressure others  
 26 to pay their own fines instead of challenging the orders. The Constitution forbids such actions.

27       9. The Plaintiffs ask this Court to find that the State and County COVID-19 orders violate  
 28 their freedom of religion and assembly under the First Amendment and California civil rights law.

1 Plaintiffs contend the fines levied against them are unlawful because they are predicated upon  
 2 unconstitutional State and County COVID-19 orders. The fines also violate the Eighth Amendment's  
 3 prohibition on excessive fines. Finally, Plaintiffs seek damages, pursuant to the Bane Act, for the  
 4 Defendants' violation of their civil rights.

5 **PARTIES, JURISDICTION AND VENUE**

6 10. Plaintiff CALVARY CHAPEL SAN JOSE ("CCSJ"), a California non-profit  
 7 corporation, is a Christian church organized exclusively for religious purposes. CCSJ is located in the  
 8 city of San Jose, California. Calvary Christian Academy is a ministry branch of CCSJ that is operated  
 9 separately from CCSJ.

10 11. Plaintiff MIKE MCCLURE is a resident of Santa Clara County and serves as the lead  
 pastor of CCSJ.

12 13. Plaintiff SOUTHRIDGE CHURCH ("Southridge") is a domestic non-profit corporation  
 Christian church organized exclusively for religious purposes within the meaning of Section 501(c)(3)  
 14 of the Internal Revenue Code. Southridge Church is located in the City of San Jose, California.

15 16. Plaintiff MICAIAH IRMLER is a resident of Santa Clara County and serves as the lead  
 pastor of Southridge.

17 18. Defendant SARA H. CODY, M.D. is the Public Health Officer for Santa Clara County,  
 California, and the final policymaker for the Santa Clara County Public Health Department. She is sued  
 19 in her official capacity only. She promulgated Santa Clara County's health orders and guidelines.

20 21. Defendants MIKE WASSERMAN, CINDY CHAVEZ, DAVE CORTESE, SUSAN  
 ELLENBERG, and JO SIMITIAN are each sued in their official capacities as members of the Santa  
 22 Clara County Board of Supervisors. The County Board of Supervisors are responsible for adopting the  
 23 challenged Urgency Ordinance authorizing Santa Clara County to issue fines against the Plaintiffs.

24 25. Defendant JAMES WILLIAMS is sued in his official capacity as the director of the  
 Santa Clara County Emergency Operations Center. In that role, he shaped the regional, statewide and  
 26 county response to the COVID-19 pandemic. Williams was charged with monitoring waves of COVID-  
 27 19 cases and hospital capacity and coordinating with the Santa Clara County Public Health Department  
 28 to effectively respond to the COVID-19 pandemic. As a final policymaker for the Emergency

1 Operations Center, he helped Dr. Cody promulgate the COVID-19 health orders and guidelines related  
 2 to capacity restrictions, face masks and singing.

3 17. Dr. Cody, Mr. Williams and the Santa Clara County Board of Supervisors are hereinafter  
 4 collectively referred to as the “County Officials.”

5 18. Defendant SANTA CLARA COUNTY is a political subdivision of the State. It is sued  
 6 herein based on the actions of the County Officials as final policymakers under *Monell v. Department*  
 7 *of Social Services*.

8 19. Plaintiffs’ claims arise under the United States Constitution and 42 U.S.C. § 1983. The  
 9 Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

10 20. This Court has authority to grant the requested declaratory relief under the Declaratory  
 11 Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57 of the Federal Rules of Civil  
 12 Procedure. This Court is also authorized to grant injunctive relief and damages under 28 U.S.C. § 1343,  
 13 pursuant to Rule 65 of the Federal Rules of Civil Procedure, and award reasonable attorney’s fees and  
 14 costs under 42 U.S.C. § 1988.

15 21. Venue is proper in this Court under 28 U.S.C. § 1331(b) because all Defendants are  
 16 situated in this judicial district and because a substantial part of the events or omissions giving rise to  
 17 Plaintiffs’ claims occurred in this district. The Court has supplemental jurisdiction over the state law  
 18 claims under 28 U.S.C. § 1337.

## 19 FACTUAL BACKGROUND

20 22. In December 2019, the World Health Organization (“WHO”) reported that a novel  
 21 coronavirus had been detected in Wuhan, China. The WHO dubbed the virus COVID-19.

22 23. On January 26, 2020, California public health officials announced the first COVID-19  
 23 positive test in California.

24 24. Between January 26, 2020, and March 4, 2020, California state health officials said  
 25 repeatedly that “the risk to the general public” from the coronavirus was “low.”

26 25. On February 26, 2020, the California Department of Public Health (“CDPH”) released  
 27 a statement that downplayed the risk of COVID-19 in the general population, stating that “[w]hile  
 28 COVID-19 has a high transmission rate, it has a low mortality rate.” The CDPH also noted that “of

1 those who have tested positive for COVID-19, approximately 80 percent do not exhibit symptoms that  
2 would require hospitalization.”

3       26. On March 3, 2020, the CDPH issued its first detailed guidelines for fighting COVID-19.  
4 Among other things, it said that healthy people should not wear masks because they were not effective.  
5 Sonia Angell, the State Public Health Officer at the time, also announced that the State had ramped up  
6 testing for the coronavirus, but she warned against reading anything into the expected increase in  
7 confirmed cases, saying they were “not necessarily a sign that the rate of infection is increasing, but  
8 that our ability to test more people more rapidly is leading to better detection.”

9       27. On March 4, 2020, Governor Gavin Newsom declared a state of emergency related to  
10 COVID-19. A true and correct copy of the Governor’s emergency declaration is attached hereto as  
11 **Exhibit “1.”**

12       28. On March 11, 2020, the Governor announced that public health officials had decided to  
13 recommend canceling or postponing mass gatherings with 250 people or more until at least the end of  
14 March. State health officials also issued their first guidelines for “social distancing” and suggested other  
15 measures people could voluntarily undertake to slow the spread of the coronavirus.

16       29. The Governor issued an executive order on March 12, 2020, that reflected the new  
17 guidelines (“the March 12 Executive Order”). Among other things, the order noted the “need to secure  
18 numerous facilities to accommodate quarantine, isolation, or medical treatment of individuals testing  
19 positive for or exposed to COVID-19....” Thus, the order cited the Governor’s authority under the  
20 California Emergency Services Act “to ensure adequate facilities exist to address the impacts of  
21 COVID-19 ....” A true and correct copy of the March 12 Executive Order is attached hereto as **Exhibit**  
22 **“2.”**

23       30. In issuing the March 12 Executive Order, the Governor said: “Changing our actions for  
24 a short period of time will save the life of one or more people you know.”

25       31. The March 12 Executive Order was not a criminal law. It did not require any businesses  
26 or schools to close. It did not tell people what they could and could not do, what was essential or non-  
27 essential. It was narrowly tailored to protect individual rights while promoting the State’s interest in  
28 ensuring that it had enough hospital beds to treat COVID-19 patients.

1       32. A few days later, a group of government officials in the Bay Area—covering almost  
 2 every Bay Area County – took a further step and ordered all their residents to “shelter in place”  
 3 indefinitely. This group was spurred into action by Defendants Cody and Williams. A true and correct  
 4 copy of the County’s Shelter in Place Order is attached hereto as **Exhibit “3.”** James Williams, as the  
 5 final policymaker for the Emergency Operations Center, and Dr. Cody, as the final policymaker for the  
 6 Santa Clara County Public Health Department, made the joint decision to cancel all indoor gatherings.  
 7 Williams told the OC Register that the County did not consider an airport as a large gathering place.

8       33. On March 19, 2020, Governor Newsom ordered all Californians to stay inside their  
 9 homes indefinitely, only allowing them to leave to perform activities that were necessary to maintain  
 10 the “federal critical infrastructure.” A true and correct copy of the Governor’s “Stay at Home Order” is  
 11 attached hereto as **Exhibit “4.”**

12       34. The Governor said during a televised speech that he issued this order because state  
 13 officials had changed their assessment of the coronavirus and believed 56 percent of Californians –  
 14 nearly 25 million people – would be infected with the virus between mid-March and mid-May 2020.  
 15 The Governor also said during his March 19th speech that state officials believed between 250,000 and  
 16 500,000 people would die from the virus by June 2020.

17       35. Upon information and belief, the ominous numbers the Governor cited in his “stay at  
 18 home” speech came from Bay Area officials, including Defendants Cody and Williams. In fact, Mr.  
 19 Williams publicly took credit for the issuance of the statewide stay-at-home-order.

20       36. The lockdown orders were unprecedented. They dictated what people could do,  
 21 designating certain activities as “essential” such as pet stores, marijuana stores and liquor stores, and  
 22 allowed those to continue operating, while others were deemed “non-essential” and ordered to shut  
 23 down. No American government had ever issued such an order in peacetime, not even during the 1918-  
 24 19 influenza pandemic that some have compared COVID-19 to.

25       37. There was no rhyme or reason to the distinctions the orders made between essential and  
 26 non-essential activities. For example, pet supply stores were deemed essential because, according to  
 27 government officials, pets provide comfort to people dealing with mental health issues. Churches have  
 28 a long record of providing similar comfort to people in need, but they were deemed non-essential and

1 subjected to some of the strictest rules imaginable, even on holy days. The orders also made arbitrary  
2 distinctions between the numbers of people who could participate in certain activities. At one point, one  
3 Bay Area health official, communicating on a “Slack” message with others from the region, asked: “Do  
4 the numbers 100 and 35 have any basis in anything?” The San Benito County health officer responded:  
5 “No basis as I can see. The numbers are random.”

6 38. Equally unprecedented, the lockdown orders contained criminal penalties, including  
7 fines, to ensure enforcement. Most California governments took a lax approach to that. Even the  
8 Governor discouraged enforcement. He asked Californians to voluntarily comply with the orders,  
9 saying, “This is not a permanent state; this is a moment in time.” The Governor added: “This is a  
10 dynamic situation. I don’t expect this to be many, many months, but for the time being, we are  
11 recognizing the next eight weeks [as the key period].”

12 39. Fortunately, the predicted facts did not occur. 25 million Californians did not become  
13 infected with the coronavirus between March and June 2020. Hospitals were not overrun with millions  
14 of COVID-19 patients. Hundreds of thousands of Californians did not die.

15 40. By May 2020, State and County officials were also aware of antibody studies, including  
16 studies conducted in Santa Clara County, revealing the coronavirus was spreading at a faster rate and  
17 less deadly than they had predicted. The studies also revealed many Californians already had antibodies  
18 to the virus, further undermining the justification for stay-at-home orders.

19 41. Indeed, the Centers for Disease Control and Prevention (“CDC”) predicted that the  
20 confirmed case fatality rate for COVID-19 would fall to between 0.26 percent and 0.65 percent, far  
21 lower than the two to four percent fatality rate some believed back in March 2020. The CDC also reports  
22 that 94 percent of people who have died with COVID-19 had at least one co-morbidity, such as diabetes,  
23 cancer, obesity or heart disease.

24 42. By May 2020, Governor Newsom knew that California was flattening the curve and  
25 protecting its health care system from being overwhelmed. Nonetheless, on May 4, 2020, he announced  
26 that he would continue the State’s Stay at Home Order indefinitely, without considering whether there  
27 were less restrictive ways of controlling COVID-19. Santa Clara County followed suit. A true and  
28

1 correct copy of the Governor's May 4 executive order extending the Stay-at-Home Order is attached  
2 hereto as **Exhibit "5."**

3       43. In his May 4 executive order, the Governor gave the State Public Health Officer (at the  
4 time Dr. Angell and now Dr. Aragon) discretion to add exceptions to the activities permitted under the  
5 order based on individual counties' success in testing, controlling the virus, and having adequate  
6 resources to treat COVID-19 patients. However, this first reopening plan continued to discriminate  
7 against religious activities. Despite the constitutional protection for religious activities, the State's first  
8 reopening plan treated churches less favorably than similarly situated secular activities like dine-in  
9 restaurants, offices, schools, malls and retail stores. There was no basis for this discrimination. The  
10 State did not have any evidence that the coronavirus was spreading at a greater rate inside churches as  
11 compared to these indoor settings.

12       44. During the early stages of the pandemic (from March to May 2020), many courts opted  
13 to stay out of COVID-19-related disputes, likely believing the government would lift the lockdown  
14 orders quickly, as Governor Newsom promised to do. Four justices on the United States Supreme Court  
15 warned against this, writing on May 29, 2020, that "California's discrimination against religious  
16 worship services contravenes the Constitution." The orders were not lifted, though, and the government  
17 continued to discriminate against religious activities.

18       45. State and County officials said that churches were dangerous because people gathered  
19 close together for extended periods of time and sang together, thus increasing the risk of COVID-19  
20 infection. That was pure speculation, though, unsupported by evidence and based on stereotypes of  
21 people who attend churches like CCSJ. More importantly, by June 2020, government officials knew  
22 where COVID-19 was spreading. It was spreading in areas that had never been shut down, like  
23 transportation and construction, things the government had decided were too important to shut down.

24       46. The government's purported justification for shuttering churches took a further hit  
25 during the summer of 2020 as public officials allowed—and explicitly encouraged—people to engage  
26 in mass protests in response to the death of George Floyd. The government defended its actions as  
27 promoting "free speech," all the while trampling upon the right to religious free exercise protected by  
28 the very same First Amendment.

1       47. Throughout the month of June 2020, Governor Newsom actively encouraged protestors  
 2 by tweeting posts like “protestors have the right to protest peacefully.”

3       48. On or around July 2, 2020, when asked to explain the extent to which protestors should  
 4 heed the COVID-19 orders, Governor Newsom explained “we have a Constitution, we have a right to  
 5 free speech”, and “we are dealing with a moment in our nation’s history that is profound and  
 6 pronounced...Do what you think is best...”

7       49. On or around June 26, 2020, at a news conference, former State Health Officer Dr.  
 8 Angell admitted that people who attend large protests have been affected by COVID-19: “We do not  
 9 have the exact numbers, but we do know from speaking to our counties that it is a contributor.”

10       50. On or around this same time, COVID-19 cases surged across California, including in  
 11 Santa Clara County.

12       51. Dr. Cody was also aware that protests were likely contributing to the spread of COVID-  
 13 19. Nevertheless, the County acknowledged that protestors had a fundamental right that was critical to  
 14 the health of democracy. A true and correct copy of a Facebook post by the County is attached hereto  
 15 as **Exhibit “6.”** The County did not acknowledge the fundamental right to attend worship services.

16       52. Many of the protestors walking the streets in the summer of 2020 were not wearing  
 17 masks or practicing social distancing. The Defendants knew that although the protestors’ activities  
 18 posed a significant risk of COVID-19 transmission, their activity was protected speech. Thus, they did  
 19 not punish them for violating COVID-19 orders. Needless to say, State and County officials did not  
 20 show that same deference to churches and religious adherents.

21       53. By June 1, 2020, the County and State officials knew, or should have known, that their  
 22 lockdown of churches violated the First Amendment. In fact, on May 19, 2020, the U.S. Department of  
 23 Justice sent Governor Newsom a letter that said exactly that. A true and correct copy of this letter is  
 24 attached hereto as **Exhibit “7.”** Similarly, on May 22, 2020, President Trump announced that the CDC  
 25 would classify houses of worship as “essential,” and he called on all governors to allow houses of  
 26 worship to immediately reopen.

27       54. On May 25, 2020, Governor Newsom announced the reopening of churches in  
 28 California. This announcement was somewhat true, as churches were limited to 25% building capacity

1 or 100 attendees, whichever is lower. Other secular locations where people gather like schools, airports,  
 2 train stations and bus stations, however, did not have building occupancy limits.

3 55. The County Officials did not even try to heed the federal government's warning. Led by  
 4 Dr. Cody and Williams, the County continued to ban indoor religious services after May 25, 2020. The  
 5 County consistently imposed harsher restrictions on churches than similarly situated secular activities  
 6 without any scientific basis or compelling justification for the disparate treatment.

7 56. On or around the end of May 2020, Dr. Cody was concerned about the State's partial  
 8 compliance with the federal government's warning and stated: "Gatherings are of course profoundly  
 9 and personally important to all of us, but our ability to contain the virus from spreading if there's one  
 10 COVID-positive individual at such a large event is quite limited....And it would rapidly exceed even  
 11 our current ambitious and unprecedented effort to establish a large case investigation and contact tracing  
 12 workforce here and elsewhere throughout the state." Despite her concern of large gatherings, as of June  
 13 5, 2021, the County allowed certain businesses where people can gather, such as retail, shopping  
 14 centers, television, radio and other media services, grocery stores, airports, summer camps and summer  
 15 schools, to re-open.

16 57. The County also required the hosts of "Small Outdoor Ceremonies and Religious  
 17 Gatherings" to "maintain a list with the names and contact information of all participants." Yet, no such  
 18 requirement was asked of shopping centers, summer camps or summer schools.

19 58. On July 2, 2020, Dr. Cody issued a Risk Reduction Order, requiring risk reduction  
 20 measures to be in place across all business sectors and activities. A true and correct copy of the Risk  
 21 Reduction Order is attached hereto as **Exhibit "8."** The Order prohibited indoor gatherings, unless the  
 22 gathering involved no more than 20 people or 1 person per 200 square feet, whichever is fewer. It also  
 23 prohibited outdoor gatherings unless the gathering involved no more than 60 people. Santa Clara County  
 24 describes a gathering as an "event, assembly, meeting, or convening that brings people from separate  
 25 households in a single space, indoors or outdoors, at the same time and in a coordinated fashion." A  
 26 "gathering," by the County's definition, does not include normal operations in childcare settings, school  
 27 settings, areas where people may transit, hospitals, offices, stores and restaurants.

1       59.     Dr. Cody issued the Risk Reduction Order despite no evidence (i.e., contract tracing  
 2 studies) showing that entities, locations or events falling within her definition of a “gathering” were or  
 3 are more likely to cause the spread of COVID-19 than gathering at malls, restaurants, public transit  
 4 areas, stores, day camps and childcare facilities. Indeed, the County has traced more COVID-19 cases  
 5 to retail stores, grocery stores, offices and restaurants than churches.

6       60.     On or around July 6, 2020, Plaintiffs became subject to State guidance ordering them to  
 7 not engage in singing or chanting at indoor religious services.

8       61.     On August 3, 2020, the CDPH issued guidance for schools, a true and correct copy of  
 9 which is attached hereto as **Exhibit “9.”** The guidance cautioned that “activities that involve singing  
 10 must only take place outdoors.” The CDPH softened this language in January 2021 to permit band  
 11 practice “provided that precautions such as physical distancing and mask wearing are implemented to  
 12 the maximum extent possible.”

13       62.     The CDPH did not ban singing and chanting in day camps or childcare centers.

14       63.     On August 28, 2020, the CDPH issued the Blueprint for a Safer Economy (“Blueprint”)  
 15 that established a procedure for assigning counties to one of four tiers based on the severity of the  
 16 COVID-19 outbreak in each locality. A true and correct copy of the Blueprint Activity and Business  
 17 Tiers is attached hereto as **Exhibit “10.”** The Blueprint discriminated against houses of worship.

18       64.     On October 5, 2020, Dr. Cody issued a Revised Risk Reduction Order, a copy of which  
 19 is attached hereto as **Exhibit “11.”** The Revised Order allowed more businesses and activities to resume  
 20 operations provided they followed precautions like wearing masks and social distancing but still banned  
 21 indoor gatherings. The Order also expressly exempted government entities and their contractors “to the  
 22 extent that such requirements would impede or interfere with an essential governmental function.” On  
 23 information and belief, such activities included construction, first responders, court personnel and law  
 24 enforcement.

25       65.     On or around October 13, 2020, Dr. Cody issued a Revised Mandatory Gatherings  
 26 Directive which was more restrictive than the State’s Blueprint. The Directive only allowed religious  
 27 gatherings of up to 25% the facility’s capacity or 100 people, whichever was fewer, in Tier 3 of the  
 28 Blueprint.

1       66. On November 16, 2020, the CDPH issued an updated Guidance for the Use of Face  
2 Coverings (“Face Covering Guidance”). A true and correct copy of the Face Covering Guidance is  
3 attached hereto as **Exhibit “12.”**

4       67. The Face Covering Guidance required everyone to wear a mask and maintain 6 feet of  
5 distance from one another, with exceptions made for dining in restaurants.

6       68. The following categories of persons were exempted from the Guidance: persons younger  
7 than two years old; persons with a medical condition or disability; persons who are hearing impaired;  
8 and persons for whom wearing a face covering would create a risk to the person related to their work,  
9 such as persons competing in sports.

10       69. Television, film and recording studios (i.e., Hollywood) have been encouraged - but not  
11 required - to follow COVID-19 face-covering and singing guidelines and restrictions.

12       70. Other industries also did not have to fully adhere to the Face Covering Guidance at all  
13 times. For instance, barbershops and hair salons could remain within six feet of distance when  
14 “providing haircutting and other close contact services.” A true and correct copy of the Guidance for  
15 Barbershops and Hair Salons is attached hereto as **Exhibit “13.”**

16       71. Public transit carriers were recommended to “reduce maximum occupancy onboard  
17 transit and rail services,” and the State advised that “seats within six feet of the operator should be  
18 blocked off and unavailable if it does not impact the requirements for handicapped-accessible seating.”  
19 A true and correct copy of the Guidance for Public Transit/Passenger Carrier Services is attached hereto  
20 as **Exhibit “14.”** Similarly, passenger carrier services were advised, but not required, to encourage  
21 riders to sit in the back seat to maximize distance between the passenger and the driver.

22       72. Further, persons were not required to wear a mask while receiving a facial or esthetic  
23 care, and workers performing esthetic and/or skin care could be within six feet of distance of their client.  
24 A true and correct copy of the Guidance for Personal Care Services is attached hereto as **Exhibit “15.”**

25       73. On or around November 16, 2020, the State announced that it was assigning Santa Clara  
26 County to Tier 1 of the Blueprint. Around the same time, Dr. Cody issued a Mandatory Directive on  
27 Capacity Limitations. The Directive completely banned indoor worship services but allowed shopping

1 centers, retail stores, grocery stores, public transit and construction sites to remain open at limited  
 2 capacity.

3       74. On November 24, 2021, the State also issued guidance for restaurants, which  
 4 incorporated the Face Covering Guidance. A true and correct copy of the Guidance for  
 5 Restaurants/Wineries is attached hereto as **Exhibit “16.”** At this time, the State allowed “singing,  
 6 shouting, playing a wind instrument, or engaging in similar activities” in restaurants and wineries.

7       75. On November 25, 2020, the Supreme Court ruled that New York’s COVID-19  
 8 restrictions on churches violated the First Amendment. It issued a similar ruling against Governor  
 9 Newsom’s orders on December 3, 2020.

10       76. Nonetheless, the State and the County Officials repeatedly defied the Supreme Court’s  
 11 edicts.

12       77. On December 3, 2020, the CDPH announced a Regional Stay at Home Order (“Regional  
 13 Order”) which banned all indoor religious worship services while allowing only essential businesses to  
 14 remain open. A true and correct copy of the Regional Order is attached hereto as **Exhibit “17.”**

15       78. On February 5, 2021, the U.S. Supreme Court intervened once again and enjoined  
 16 California’s ban on indoor worship services.

17       79. On February 12, 2021, in flagrant disregard of the Supreme Court’s rulings, the County,  
 18 at Mr. Williams’ express direction, reinstated the County’s ban on indoor worship services. On  
 19 information and belief, the decision to reinstate this ban was made by Mr. Williams acting not as a  
 20 lawyer but as a public health policymaker in tandem with Dr. Cody. Indeed, it was Mr. Williams who,  
 21 acting like a policymaker, publicly justified the ban in the press by saying the County’s COVID-19  
 22 orders were “even-handed” and therefore “fundamentally different from the State rules....” The  
 23 Supreme Court disagreed and, on February 26, 2021, enjoined enforcement of the ban.<sup>1</sup> Even after the  
 24 Supreme Court’s ruling, the County did not stop interfering with Plaintiffs’ First Amendment rights.

25       1 All COVID-19 orders, guidelines and directives issued by the County during the pendency of this  
 26 lawsuit are hereinafter referred to as “County Orders.” The County Orders also encompass the Urgency  
 27 Ordinance adopted by the Santa Clara County Board of Supervisors which authorized the fines. Thus,  
 28 a challenge to the ordinance is a challenge to the fines. All COVID-19 orders, directives and guidelines  
 issued by the State during the pendency of this lawsuit are hereinafter referred to as “State Orders.”

1 Mr. Williams, acting as a policy maker, not a lawyer, publicly announced that “[i]ndoor gatherings of  
 2 all kinds remain very risky, and we continue to urge all religious institutions to carefully follow the  
 3 public health recommendations to avoid spread of COVID-19 among their congregations and the  
 4 broader community....”

5       80.     The Defendants are still trying to collect more than \$2.8 million in fines they have  
 6 imposed on Plaintiffs for violating restrictions on indoor gathering, the face-covering mandate and the  
 7 singing ban and for failing to sign the County’s Social Distancing Protocol. The fines for holding  
 8 unlawful gatherings combined violations of the capacity restrictions, face-covering mandate and singing  
 9 ban. The fines were not issued until August 2020, when the Defendants knew that COVID-19 was not  
 10 spreading *en masse* in churches and that indoor worshipping was not a menace to public health. The  
 11 fines were authorized by an ordinance adopted by the County Supervisors on August 11, 2020, a true  
 12 and correct copy of which is attached hereto as **Exhibit “18.”**

13       81.     These fines are, on their face, grossly disproportional to the harm allegedly done by  
 14 Plaintiffs’ refusal to obey the unlawful orders, as no COVID-19 case has been traced to Plaintiffs’  
 15 church gatherings. County officials, led by Mr. Williams, have taken extreme measures to collect the  
 16 fines and to deter CCSJ and Pastor McClure from continuing to fight the orders in court. For example,  
 17 in December 2020, Assistant County Counsel Tony Lopresti, as ratified by Mr. Williams, sent a letter  
 18 to CCSJ’s lender, Cass Commercial Bank (“Cass Bank”), telling it that CCSJ had been held in contempt  
 19 and fined over \$1 million for violating COVID-19 orders. A true and correct copy of the letter is  
 20 attached hereto as **Exhibit “19.”** On January 4, 2021, Mr. Lopresti, as ratified by Mr. Williams, sent  
 21 another, similar letter to Cass Bank. A true and correct copy of that letter is attached hereto as **Exhibit**  
 22 **“20.”**

23       82.     There was no legitimate reason for Mr. Williams to send these letters. Upon information  
 24 and belief, the County has not sent such letters to any other person or entity who has defied its COVID  
 25 orders. Mr. Williams sent the letters to retaliate against Plaintiffs for pushing back against the unlawful  
 26 mandates, and to deter them from pursuing further litigation. At this point, Pastor McClure and CCSJ  
 27 were defending themselves in contempt proceedings a second time. Mr. Williams was aware that their  
 28 letters would put pressure on Cass Bank to drop CCSJ and, in turn, force CCSJ and McClure to pay the

1 fines, comply with the State and County Orders and drop their legal challenges to not have their church  
 2 building foreclosed on.

3       83.    Cass Bank interpreted the letters as a threat that the County intended to take the church  
 4 property to satisfy the fines. On January 21, 2021, Cass Bank sent a Notice of Default to CCSJ for  
 5 noncompliance with governmental regulations and nonpayment of fines. Cass Bank only withdrew the  
 6 default notice after it learned that CCSJ was contesting the fines (information Mr. Williams had  
 7 intentionally omitted from the County's letters).

8       84.    Nevertheless, as a result of the County's actions, CCSJ had to make several accelerated  
 9 payments, exceeding \$800,000. These payments exceeded CCSJ's routine monthly loan payment and  
 10 caused CCSJ to divert money that would have otherwise been invested into the church community and  
 11 ministries.

12       85.    The County's actions also caused Pastor McClure great despair, anxiety and stress  
 13 because he thought the bank was going to call the church's mortgage note and foreclose on the property.  
 14 Pastor McClure was especially worried about what would become of his church family, who were  
 15 already suffering from fear, depression and anxiety to a degree far beyond anything he had witnessed  
 16 in his thirty years of pastoring.

17       86.    The Defendants' actions have had a chilling effect on Plaintiffs. CCSJ and Southridge  
 18 serve hundreds of County residents. Plaintiffs have sincerely and deeply held religious beliefs that it is  
 19 essential for Christians to assemble and regularly gather in person for the teaching of God's Word,  
 20 prayer, worship, baptism, communion and fellowship. This is based on scriptures from the Bible,  
 21 including Hebrews 2:12 and 10:25, Ephesians 5:19, Acts 2:40-47 and Acts 5:40-42. These activities are  
 22 primarily fulfilled in the gathering of the Church body for worship services at the same location on  
 23 Sunday mornings. The Plaintiffs also believe that the church is to approach God with unveiled faces,  
 24 beholding the glory of the Lord, and being transformed into the same image from one degree of glory  
 25 to another. 2 Corinthians 3:18.

26       87.    The State and County Orders have interfered with the Plaintiffs' religious practice. It is  
 27 difficult for many congregants who are elderly or who have health problems to sing or sit for long  
 28 periods while wearing a face mask. One-on-one prayer is another crucial component of the Plaintiffs'

1 religious practice. Social distancing rules hinder congregants' ability to pray for one another, lay hands  
 2 on one another and partake of holy communion.

3 88. Several congregants have also expressed to Pastor McClure they felt intimidated by the  
 4 County enforcement officers' persistent surveillance of church services. Some congregants even  
 5 believed the County was going to order the police to arrest them for attending church. They wore an  
 6 extra set of clothes, so they were prepared in the event they were arrested.

7 89. Plaintiffs' congregations are multi-racial and represent a cross-section of society and  
 8 essential workers. Some of Plaintiffs' congregants do not have the technological ability or equipment  
 9 necessary to watch church services online. Many in CCSJ's congregation are transplants from other  
 10 states and countries who came to San Jose for economic opportunities, leaving behind family and  
 11 friends. The COVID-19 orders interfered with church services at a time when County residents  
 12 desperately needed a church community with the United States suffering the highest unemployment  
 13 rate since the Great Depression and mental health problems soaring, including suicide rates in Santa  
 14 Clara County. Indeed, the State and the County Officials often recognized these problems and they  
 15 allowed certain secular activities, like pet groomers and marijuana shops, to continue operating because  
 16 they opined those activities would help people cope with mental health issues. The State and the County  
 17 Officials did not regard churches as highly.

18 90. Presently, CCSJ holds two services each Sunday at 1175 Hillsdale Avenue, San Jose,  
 19 California. Around 500 congregants attend each service. CCSJ provides seating in the congregation, in  
 20 the gym next to the congregation, in the lobby, and in the cafe. CCSJ's building is 18,000 square feet  
 21 and the sanctuary capacity is around 1,800 people. CCSJ has 10-20% of outside fresh air circulating  
 22 into the building when the ventilation systems are operating. CCSJ has posted signs at all entrances  
 23 encouraging the congregation to socially distance and wear masks. CCSJ also provides hand sanitizer  
 24 and masks at the main church entrances. In other words, CCSJ followed the same generally applicable  
 25 "social distancing" guidelines that entertainment studios have been following since March 2020.

26 91. Similarly, Southridge began holding Sunday services at CCSJ in July 2020. Around 100  
 27 congregants attended Sunday services. Masks and hand sanitizer are also provided to Southridge's  
 28

1 congregants. Like CCSJ, Southridge has followed the same generally applicable “social distancing”  
2 guidelines that others in California have been following since March 2020.

3 92. The County Officials have not been able to trace any outbreaks of COVID-19 to CCSJ  
4 or Southridge. The County Officials have known that churches are not sources of COVID-19 outbreaks  
5 since at least the Fall of 2020. Nevertheless, they have continued to punish and attack churches for  
6 disobeying their orders, while doing nothing to penalize the industries identified by the County as  
7 hotbeds of COVID-19 infection such as construction, retail and grocery stores and restaurants.

8 93. The County has also misrepresented its data regarding the spread of COVID-19. The  
9 County recently reduced its reported COVID-19 death toll by more than 20 percent because it had  
10 previously included in its count people who actually died of other causes but were reported to have  
11 COVID-19 in their system at the time of death. Of course, the County Officials knew these numbers  
12 were inflated as early as last year because this practice was widely reported, the counts nationally  
13 revised and the error reported by the CDC, but the County Officials continued reporting the inflated  
14 numbers. They did so presumably to scare people and to justify the arbitrary and unlawful orders they  
15 imposed, especially on churches.

16 94. America is recovering from the COVID-19 pandemic. But the recovery will not be  
17 complete until government officials have been held accountable for their flagrant violations of the  
18 Constitution. As the Reverend Martin Luther King, Jr., said: “One has a moral responsibility to disobey  
19 unjust laws.” This case echoes that message.

## 20 FIRST CAUSE OF ACTION

### 21 Deprivation of Civil Rights Under 42 U.S.C. § 1983 (First Amendment)

22 95. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 94 of this  
23 Complaint as though set forth fully herein.

24 96. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the First and Fourteenth  
25 Amendments to the United State Constitution.

26 97. The Free Exercise Clause of the First Amendment to the United States Constitution, as  
27 applied to the states by the Fourteenth Amendment, prohibits Defendants from abridging Plaintiffs’  
28 right to the free exercise of religion.

1       98. Plaintiffs have sincerely held religious beliefs that the Bible is the infallible, inerrant  
 2 word of God, and that they are to follow its teachings. They believe that followers of Jesus Christ are  
 3 not to forsake the assembling of themselves together.

4       99. The State and County Orders, on their face and as applied, are neither neutral nor  
 5 generally applicable, but rather specifically and discriminatorily target the religious beliefs, speech,  
 6 assembly and viewpoint of Plaintiffs. *See Employment Div., Dept. of Human Resources of Ore. v. Smith*,  
 7 494 U.S. 872 (1990). The Defendants have prohibited certain public and private gatherings including  
 8 religious services, while exempting and/or treating a laundry list of industries and activities more  
 9 favorably.

10      100. In the alternative, the State and County Orders, on their face and as applied, impose a  
 11 substantial burden on Plaintiffs' free exercise of religion. *See Sherbert v. Verner*, 374 U.S. 398 (1963).  
 12 The Orders put substantial pressure on Plaintiffs to violate their sincerely held religious beliefs by  
 13 ignoring the fundamental teachings and tenets of their religious texts including those tenets requiring  
 14 assembly, worship with unveiled faces, one-on-one prayer, singing and communion.

15      101. In addition to relegating Plaintiffs to a third-class status, the Defendants have threatened  
 16 criminal penalties for holding in-person church services. The Defendants have in fact levied  
 17 bankruptcy-inducing fines on Plaintiffs for holding church gatherings and have thus substantially  
 18 burdened Plaintiffs' religious exercise.

19      102. The Defendants did not have a compelling interest that justified their discrimination  
 20 against and/or imposition of substantial burden upon religious activities. Even if they did, the  
 21 Defendants did not employ the least restrictive means available to fulfill the interest.

22      103. In engaging in the actions alleged above, the County Officials acted under color of law  
 23 and within the course and scope of their employment at the County.

24      104. Plaintiffs seek a judicial declaration that the State and County Orders violated the Free  
 25 Exercise Clause and nominal damages. Such a determination will resolve the constitutionality of the  
 26 fines levied against the Plaintiffs, which are predicated upon the State and County Orders. Plaintiffs  
 27 also seek to enjoin enforcement of the fines. Plaintiffs are entitled to recover their costs and attorneys'  
 28 fees under 42 U.S.C. § 1988.

## **SECOND CAUSE OF ACTION**

## **Deprivation of Civil Rights under Article 1, Section 4 of the California Constitution**

105. Plaintiffs incorporate by reference the allegations in the preceding paragraphs 1 through 104 as if fully set forth herein.

106. Article I, Section 4 of the California Constitution states, “Free exercise and enjoyment of religion without discrimination or preference are guaranteed.”

107. “[T]he religion clauses of the California Constitution are read more broadly than their counterparts in the federal Constitution.” *Carpenter v. City and County of San Francisco*, 93 F.3d 627, 629 (1996).

108. For the reasons stated in Plaintiffs' First Cause of Action, the State and County Orders constitute a substantial burden on Plaintiffs' free exercise of religion under the California Constitution because they have prohibited indoor gatherings, singing, communion and one-on-one prayer and have criminalized Plaintiffs for exercising their religion. This burdening cannot satisfy strict scrutiny because California permits other industries and activities to proceed unhindered or under less stringent conditions.

109. Plaintiffs seek a judicial declaration that the State and County Orders violated Article 1, Section 4 of the California Constitution and nominal damages. Such a determination will resolve the constitutionality of the fines levied against the Plaintiffs, which are predicated upon the State and County Orders. Plaintiffs also seek to enjoin enforcement of the fines. Plaintiffs are entitled to recover their costs and attorneys' fees under California Code of Civil Procedure Section 1021.5. The Government Claims Act does not bar the relief requested.

### **THIRD CAUSE OF ACTION**

## Deprivation of Civil Rights Under 42 U.S.C. § 1983 (First Amendment)

110. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 109 of this Complaint as though set forth fully herein.

111. The First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the government from abridging the right of the people to peaceable assembly.

1       112. “The right of free speech, the right to teach, and the right to assembly, are, of course,  
 2 fundamental rights.” *Whitney v. California*, 274 U.S. 357, 373 (1927). When a government practice  
 3 restricts fundamental rights, it is subject to “strict scrutiny” and can be justified only if it furthers a  
 4 compelling government purpose and, even then, only if no less restrictive alternative is available. *See*,  
 5 *e.g.*, *San Antonio Indep. Sc. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S.  
 6 330 (1972).

7       113. By denying Plaintiffs the ability to conduct indoor church services, the Defendants have  
 8 violated the Freedom of Assembly Clause to the United States Constitution.

9       114. The State and County Orders, on their face and as applied, are unconstitutionally vague  
 10 and overbroad as they chill and abridge Plaintiffs’ right to peaceably assemble.

11       115. The State and County Orders, on their face and as applied, constitute an unconstitutional  
 12 prior restraint on Plaintiffs’ right to assemble.

13       116. The State and County Orders, on their face and as applied, do not leave open ample  
 14 alternative channels for assembly or communication for Plaintiffs.

15       117. The Defendants do not have a compelling, legitimate or rational interest in treating  
 16 Plaintiffs differently than other secular businesses or activities or for substantially burdening their  
 17 religious practices.

18       118. The State and County Orders, on their face and as applied, do not pass strict scrutiny  
 19 because they are not narrowly tailored to serve the government’s purported interest. Imposing more  
 20 restrictive requirements that target churches while allowing numerous entities and activities to remain  
 21 open is not the least restrictive means of achieving the Defendant’s purported interest in curbing the  
 22 spread of COVID-19.

23       119. Plaintiffs seek a judicial declaration that the State and County Orders violated the  
 24 Assembly Clause and nominal damages. Such a determination will resolve the constitutionality of the  
 25 fines levied against the Plaintiffs, which are predicated upon the State and County Orders. Plaintiffs  
 26 also seek to enjoin enforcement of the fines. Plaintiffs are entitled to recover their costs and attorneys’  
 27 fees under 42 U.S.C. § 1988.

## **FOURTH CAUSE OF ACTION**

## **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (Fourteenth Amendment)**

120. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 119 of this Complaint as though set forth fully herein.

121. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United State Constitution.

122. The Fourteenth Amendment's Equal Protection Clause guarantees all Americans the equal protection of the law. The Equal Protection Clause bars the government from treating Americans differently based on certain immutable characteristics, including their religious beliefs.

123. The Defendants violated Plaintiffs' Fourteenth Amendment rights by creating COVID-19 health orders that, as alleged above, treated indoor religious services as less essential and more dangerous than similarly situated secular activities. Defendants had no rational basis for this disparate treatment, much less a compelling justification for it, and their orders were not narrowly tailored to serve a compelling interest.

124. In engaging in the actions alleged above, the County Officials acted under color of law and within the course and scope of their employment at the County.

125. Plaintiffs seek a judicial declaration that the State and County Orders violated the Equal Protection Clause and nominal damages. Such a determination will resolve the constitutionality of the fines levied against the Plaintiffs, which are predicated upon the State and County Orders. Plaintiffs also seek to enjoin enforcement of the fines. Plaintiffs are entitled to recover their costs and attorneys' fees under 42 U.S.C. § 1988.

## **FIFTH CAUSE OF ACTION**

## **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (Eighth Amendment)**

126. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 94 of this Complaint as though set forth fully herein.

127. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the Eighth Amendment to the United State Constitution.

128. The Eighth Amendment, as incorporated against the County through the Fourteenth Amendment, prohibits the government from imposing excessive fines on Americans.

129. The Urgency Ordinance, on its face and as applied, violates the Eighth Amendment.

130. The \$2.87 million in fines the Defendants have imposed on Plaintiffs are grossly disproportionate to the harm allegedly done by Plaintiffs' refusal to follow all of the County's COVID-19 orders since last fall. Thus, they violate the Eighth Amendment.

131. In engaging in the actions alleged above, the County Officials acted under color of law and within the course and scope of their employment at the County.

132. Plaintiffs lack an adequate remedy at law and will be irreparably harmed if the Court does not enjoin the Defendants from collecting \$2.87 million in unlawful fines. Therefore, Plaintiffs seek declaratory relief and injunctive relief enjoining the Defendants from enforcing the fines. Plaintiffs also seek nominal damages. Plaintiffs are also entitled to recover their costs and attorneys' fees under 42 U.S.C. § 1988.

## **SIXTH CAUSE OF ACTION**

## **Deprivation of Civil Rights Under Article 1, Section 7 of the California Constitution**

133. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 94 of this Complaint as though fully set forth herein.

134. Article 1, Section 7 of the California Constitution protects against cruel and unusual punishment and excessive fines.

135. For the reasons stated in Plaintiffs' Fifth Cause of Action, the County Ordinance and excessive fines violates Article 1, Section 7 of the California Constitution.

136. Plaintiffs lack an adequate remedy at law and will be irreparably harmed if the Court does not enjoin the Defendants from collecting \$2.87 million in unlawful fines. Therefore, Plaintiffs seek declaratory relief and injunctive relief enjoining the Defendants from enforcing the fines. Plaintiffs also seek nominal damages. Plaintiffs are entitled to recover their costs and attorneys' fees under California Code of Civil Procedure Section 1021.5. The Government Claims Act does not bar the relief requested.

## **SEVENTH CAUSE OF ACTION**

## **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (Monell)**

137. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 136 of this Complaint as though set forth fully herein.

138. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the First, Eighth and Fourteenth Amendments to the United State Constitution.

139. The unlawful actions carried out by County Officials, as alleged in the First through Sixth Causes of Action, were carried out by individuals who sit at the top of their departments within the County and who thus qualify as final policymakers under *Monell v. Department of Social Services*. Furthermore, the County Officials' actions, alleged above, were enabled and ratified by the COUNTY SUPERVISORS and thus constituted a municipal custom, policy or practice.

140. Plaintiffs seek a judicial determination that the County Officials qualify as final policymakers. Plaintiffs are also entitled to nominal damages and costs and attorneys' fees under 42 U.S.C. § 1988.

## **EIGHT CAUSE OF ACTION**

## **Violation of the Bane Act – Cal. Civil Code § 52.1**

141. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 140 of this Complaint as though set forth fully herein.

142. The Bane Act allows a person whose rights have been interfered with by means of threats, intimidation, or coercion to sue for damages, injunctive, and other equitable relief. Civ Code §52.1(b).

143. The Defendants' draconian orders and threats of criminal penalty interfered with the Plaintiffs' constitutional rights, as set forth in the United States and California Constitutions, including the right to free exercise of religion and assembly and equal protection of the law.

144. The Defendants' persistent surveillance, crippling fines and threatening letters to CCSJ's bank also interfered with the Plaintiffs' constitutional rights, as set forth in the United States and California Constitutions, including the right to free exercise of religion and assembly, equal protection of the law and right against excessive fines.

145. Plaintiffs only seek declaratory and injunctive relief and nominal damages in this lawsuit. The damages Plaintiffs seek against Defendants pursuant to California Civil Code Sections 52 and 52.1 are ancillary or incidental. In addition to damages, Plaintiffs are also entitled to attorneys' fees and costs pursuant to Sections 52 and 52.1. The Government Claims Act does not bar the relief requested.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Nominal damages for violation of civil rights under the California and United States Constitutions;
2. For a Declaratory Judgement that the State and County Orders and fines levied against the Plaintiffs are unconstitutional;
3. For injunctive relief enjoining Defendants from enforcing \$2.87 million in fines against Plaintiffs;
4. For damages pursuant to California Civil Code Sections 52 and 52.1;
5. For costs, attorneys' fees and interest, as allowed by law; and
6. For such other relief the Court determines is proper.

Respectfully submitted,

## ADVOCATES FOR FAITH & FREEDOM

Dated: April 15, 2022

/s/ Mariah Gondeiro, Esq.

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## Mariah Gondeiro

Nathan W. Kellum

Attorneys for Plaintiffs

JW Howard Attorneys, Ltd.

Dated: April 15 2022

/s/ Scott Street

As/ Scott St

Scott Street  
Attorney for Plaintiffs